IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

Crl.MC.No. 3241 of 2007()

CC.368/2007 of CHIEF JUDICIAL MAGISTRATE, KASARAGOD

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PETITIONERS: (ACCUSED):

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1. PURUSHOTHAMA, S/O. ANANDHA,
   MANJAPPADI HOUSE, P.O. R.D. NAGAR, KASARAGOD.

2. A. VASANTHA SHETTY, S/O. AITHU SHETTY,
   JAYALEKSHMI NAGAR, NULLIPPADI, KASARAGOD.

BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

RESPONDENTS: (COMPLAINANT):

STATE OF KERALA,
REPRESENTED BY THE DIRECTOR OF PUBLIC PROSECUTIONS
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 25/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3241 of 2007

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Dated this the 25th day of October, 2007

O R D E R

The petitioners face indictment in a prosecution for offences punishable under Section 292(2) I.P.C. and Section 7A (1) and (2) of the Cinematograph Act, (Act 37 of 1952). The crux of the allegations against the petitioners is that they exhibited a film in a Theatre in violation of the said statutory provisions. Investigation is complete. Final report has already been filed. The petitioners entered appearance before the learned Magistrate. It is at that stage that the petitioner has come to this Court with this petition for quashing of proceedings invoking the powers under Section 482 Cr.P.C.

2. Premature termination of proceedings is claimed on the ground that the allegations are groundless. The Code of Criminal Procedure does contemplate the possibility of groundless indictment being raised against indictees. The Code provides specific procedure, under which such indictees can claim premature termination of proceedings. Section 239/240 Cr.P.C. come into play. If the charges are groundless even in an indictment on the basis of a police report

filed, premature termination of the proceedings can be brought about. Ordinarily and normally the indictees must resort to the provisions in the Code to claim premature termination. Not that in an exceptional and proper case this court shall not have powers to invoke the extra ordinary inherent powers under Section 482 Cr.P.C. to quash such proceedings, but such invocation must certainly be in exceptional circumstances in aid of justice.

3. Having heard the learned counsel for the petitioner and having perused the Crl.M.C. and the documents, I am not persuaded to agree that this is one such case, where the extra ordinary inherent jurisdiction can or ought to be invoked. It is for the petitioner to raise his plea for discharge under Section 239 Cr.P.C. before the learned Magistrate and needless to say the learned Magistrate must consider such plea on merits and take appropriate decision.

4. The learned counsel for the petitioners submits that if unnecessary insistence were made on personal presence of the petitioners on all dates of posting, that would result in needless hardship, prejudice and inconvenience to the petitioners. They have already entered appearance. I find no reason why the learned Magistrate should insist on their personal presence until a decision is taken on the question of

charge/discharge under section 239/240 Cr.P.C. The learned Magistrate shall till that time permit the petitioners to be represented by their counsel.

5. With the above observations this Crl.M.C. is dismissed.

(R. BASANT)
Judge

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